

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Commissioner of the
NH Insurance Department,
Plaintiff

v.

Civil No. 05-cv-278-SM

Employers Insurance Company
of Wausau,
Defendant

O R D E R

Denied [11] Motion to Dismiss. Although defendant makes a number of solid arguments, having reviewed the pleadings in detail, the court is of the view that the record is insufficiently developed with respect to a number of potentially critical matters, particularly those relating to the intention of the parties (Home and USI Re) with respect to the Quota Share Agreement, the relationship between Home, USI Re, and Wausau, construction of the mutuality requirement described in the statute, and the nature and scope of the prior arbitration proceeding, to name a few. In short, the record does not support dismissal. Perhaps a better developed record may support disposition on summary judgment, but defendant has not shown that the Commissioner cannot prevail on any set of provable facts. Parenthetically, the court also notes that, as implied by the

court of appeals earlier, some of the state law issues arising here seemingly lend themselves to certification, and that issue ought to be discussed with counsel before proceeding much further.

SO ORDERED.



Steven J. McAuliffe
Chief Judge

August 3, 2006

cc: Peter C. L. Roth, Esq.
Andrew R. Levin, Esq.
Doreen F. Connor, Esq.
Natasha C. Lisman, Esq.